

MAY 26 1943

CHARLES ELMORE DR
CL**Supreme Court of the United States****OCTOBER TERM, 1943**No. **1038** 103

HARRY NEWMAN, FREDERICK BATCHELOR, JUAN URIBE,
CRESCENCIO MARTIN, RAMON MOSQUERO, MARIO LEFLER
and FRANCISCO MARTINEZ,

Petitioners,

against

UNITED FRUIT COMPANY,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT, AND BRIEF IN SUP-
PORT THEREOF**

WILLIAM L. STANDARD,
Attorney for the Petitioners.

HERMAN ROSENFELD,
on the Brief.



INDEX

	PAGE
PETITION :	
A—Summary Statement of Matters Involved.....	1
B—Jurisdiction	4
C—Question Involved	4
D—Reasons for Granting Writ.....	4
BRIEF :	
I—Statutes Involved.....	7
II—Opinions Below.....	8
III—Jurisdiction of This Court	8
IV—Statement of the Case	8
V—Question Involved	8
VI—Error Relied On and Summary of Arguments Specified as Grounds of Appeal.....	9
VII—The Construction Placed Upon the Statute by the Court Below Defeated the Legislative Intent and Deprived Petitioners of Substan- tial Rights	9
A. Petitioners were to receive food and lodging for their services.....	10
B. Wages include food and lodging fur- nished to employees	12
C. The legislative intent was to measure damages under the statute in terms of the entire compensation to be paid to petitioners	14

	PAGE
VIII—The Opinion of the Circuit Court Below Is in Apparent Conflict with a Decision of the Court of Appeals of Another Circuit.....	17
CONCLUSION	18
APPENDIX :	
State Unemployment Compensation Statutes which include board and lodging in their definition of wages	21
State Workmen's Compensation Acts which in- clude board and lodging in their definition of wages	23

CASES CITED

	PAGE
Billings v. Bousback, 200 Fed. 523.....	11
Calvin v. Huntley, 178 Mass. 29.....	16
Croxteth Hall, The; The Celtic, 10 N. S. 184.....	14
Dothie v. Macandrew & Co., 1 K. B. 803.....	14
Haas v. Globe Indem. Co., 16 La. App. 180.....	13
Hotel Assoc. of New York, Inc., NWLB Case No. BWA-362, Nov. 21, 1942.....	11
John L. Dimmick, The, 13 Fed. Cas. No. 7355.....	10, 15
Lakos v. Saliaris, 116 F. (2d) 440.....	4, 18
Liffen v. Watson, 2 All England L. R. 213, 1940 A. C.....	13
Medland v. Haule Bros., 202 Mich. 532.....	13
Nelson v. Pastel, 232 Fed. 682.....	11
Newman v. United States et al., 50 Fed. Supp. 66.....	8
O'Callahan v. Dermody, 197 Ia. 632.....	13
Platt v. Union Pac. R.R. Co., 99 U. S. 48.....	10, 16
Rodney, The, 20 Fed. Cas. No. 11993.....	11
Rosenquist v. Bowing & Co., Ltd., 2 K. B. 108.....	13
Sacramento Nav. Co. v. Salz, 273 U. S. 326.....	16
Steel Trader, The, 275 U. S. 388.....	10, 16
United States v. Fowler, 302 U. S. 540.....	16
United States v. Merriam, 263 U. S. 179.....	14
Williams v. Jacksonville Terminal Co., 315 U. S. 386..	16

STATUTES CITED

	PAGE
Judicial Code:	
Section 240(a)	4, 8
Labor Law, Art. 18, Sec. 502, subd. 6.....	12
United States Code:	
Chapter 18, Title 46, Sections 541-713	14
Chapter 18, Title 46, Section 592.....	15
Chapter 18, Title 46, Section 594.....	2, 7, 8, 9
Chapter 18, Title 46, Section 596.....	15
Chapter 18, Title 46, Section 597.....	4, 15, 17
Chapter 18, Title 46, Section 665.....	11
Chapter 18, Title 46, Section 673.....	11
Chapter 18, Title 46, Section 713.....	10
Title 26, Section 1621(a).....	12
Title 28, Section 347.....	4
Title 29, Section 203(m).....	12, 16
Title 33, Section 902(13).....	12
Title 42, Section 1101.....	12
Title 50, Section 970.....	12
Workmen's Compensation Act, 1906, c. 58.....	13
Workmen's Compensation Law, Art. 1, Sec. 2(9) (New York)	13

OTHER AUTHORITIES CITED

	PAGE
Code of Fed. Reg., 1940 Supp., Sec. 403.827.....	13
Executive Order 9250, 1942, as amended by Executive Order 9281, 1943, Tit. VI, Sec. 2.....	13, 14
Hearings re Social Security Act Amendments of 1939 before the Committee on Ways and Means, House of Representatives, 76th Congress, 1st Sess., Vol. 3:	
Page 2497	12
Pages 2488-2498	14
Report of Subcommittee on War Mobilization of the Committee on Military Affairs, pursuant to S. Res. 107, 78th Cong., 1st Sess., Oct. 7, 1943, p. 15.....	15, 18
Schwartz "On the Wage Structure of Agriculture", 57 Pol. Sc. Quar. No. 3, Sept. 1942.....	12



Supreme Court of the United States

OCTOBER TERM, 1943

No.

HARRY NEWMAN, FREDERICK BATCHELOR, JUAN URIBE,
CRESCENCIO MARTIN, RAMON MOSQUERO, MARIO LEFLER
and FRANCISCO MARTINEZ,

Petitioners,

against

UNITED FRUIT COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Supreme Court of the United States:

Petitioners, Harry Newman, Frederick Batchelor, Juan Uribe, Crescencio Martin, Ramon Mosquero, Mario Lefler and Francisco Martinez, respectfully allege:

A

Summary Statement of Matters Involved

This cause was filed in admiralty on August 17, 1942 in the District Court of the United States for the Southern District of New York to recover additional wages for the wrongful discharge of petitioners, seamen employed on board the SS. Querigua, a merchant vessel of the United

States owned and operated by the respondent, United Fruit Company, under Chapter 18, Title 46, United States Code, Section 594, which provides:

"Any seaman who has signed an agreement and is afterward discharged before commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence, satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

Originally, the United States of America, the United States Maritime Commission and United Mail S. S. Co. were also named as respondents, but at the trial in the District Court, suit was withdrawn against them and the action proceeded against the United Fruit Company only (R. 10), on an agreed statement of fact (R. 11-15).

Respondent engaged the petitioners as members of the crew of the SS. Querigua on May 28, 1941, to serve on a foreign voyage. Shipping articles were duly signed pursuant to statute before a United States Shipping Commissioner in the City of New York (R. 10). Articles were in the usual form and in addition to fixing the monthly rate of cash wages for each of the petitioners and the other members of the crew, provided that in return for the services they were to render, they were to receive provisions as set out in the articles. The value of the subsistence, it was agreed, amounted to \$2.50 per day, or \$75.00 a month for each of the petitioners (R. 12).

The proposed voyage was never made. On May 29, 1941, the respondent discharged the petitioners without their consent and for no fault of theirs, paying to each of them one day's cash wages.

The libel demands damages under the provisions of Section 594 and computes the additional wages claimed

under that statute by adding to the monthly cash earnings stipulated in the shipping articles, the value of the food and lodging to be furnished petitioners.

Respondent contended that there was no liability imposed upon it for any additional payments. It showed that the SS. Querigua had been chartered to the United States Maritime Commission for the use of the Navy, in anticipation of requisition pursuant to Executive Order, on May 29, 1941. The first notice of the proposed requisition was received on May 27, 1941, one day before the petitioners were engaged. On the 28th day of May, 1941, respondent's officers, after first endeavoring unsuccessfully to avert immediate requisition, agreed to deliver the vessel at the first possible moment and did, in fact, do so on May 29, 1941. The respondent urged these facts as a bar to any liability, insisting further that if the Court found otherwise, additional wages payable under Section 594 are restricted to the cash payments specified by the shipping articles and are not to be deemed to include the value of food and lodging.

The District Court rendered a decree for the petitioners on May 18, 1943. It found respondent liable for additional wages pursuant to statute but used as the measure of damages, the monthly cash earnings stipulated in the shipping articles, refusing to take into account the value of the food and lodging to be furnished by the respondent to the petitioners in return for their services.

Both sides then appealed from the decree. Respondent assigned as error the District Court's finding that petitioners were entitled to an additional month's wages; petitioners assigned as error the Court's failure to include the value of food and lodging in its computation of damages.

The Circuit Court of Appeals for the Second Circuit unanimously affirmed the decree in all respects on February 29, 1944.

B**Jurisdiction**

The jurisdiction of this Court rests on Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (Tit. 28, U. S. C., Sec. 347).

C**Question Involved**

The District Court limited recovery to cash remuneration on the ground that " * * * when Congress used the word 'wages' they meant wages as commonly understood and not wages and subsistence" (50 Fed. Supp., at p. 67). The Circuit Court of Appeals, affirming, declared that while "the statute is not punitive and should be construed liberally, we see no reason to add to it what does not appear on its face" (141 Fed. (2d), at p. 193). That companion statutes relating to seamen's wages mention "wages and provisions" while the statute directly involved refers only to "wages" was held "not to be without significance". The proper construction of the statute presents an important question of maritime law to this Court for determination.

D**Reasons for Granting Writ**

1. The decision of the Circuit Court of Appeals is in apparent conflict with a decision of the Circuit Court of Appeals for the Fourth Circuit, *Lakos v. Saliaris*, 116 Fed. (2d) 440 (1940), which construed Chapter 18, Title 46, United States Code, Section 597, to apply to war bonus payments to a seaman, holding that wages include all "the compensation allowed to seamen for their services on board a vessel during a voyage" (at p. 442). If the reasoning of this

case be adopted, then that of the Circuit Court of Appeals in the case at bar is erroneous.

The ruling of the Fourth Circuit that wages comprehend every form of compensation payable to seamen for their services is obviously inconsistent with that of the Second Circuit here, limiting the application of the term to monthly cash payments. The Fourth Circuit's opinion is clearly broad enough to embrace food and lodging and to justify a conclusion opposite to that reached by the Second Circuit.

2. The Circuit Court of Appeals has decided an important question of federal law which has not been but should be settled by this Court. The decision below is probably inconsistent with the legislative intent and contrary to the principles of construction which should be applied to the determination of this case. No reported cases in which this Court has considered the specific issue involved have been found.

The Courts below, construing the statute, disregarded the accepted definition of the term "wages". Almost without exception wages are considered to include every form of compensation received by an employee in return for his services. State and federal enactments dealing with wages have accepted this definition as have administrative rulings. In the absence of statutory definition, the Courts, both state and federal, have arrived at the same construction.

When employees in other industries work under conditions similar to those of seamen, in that they receive food and lodging in return for their services in addition to cash remuneration, their rights with respect to wages have been construed to embrace not only the money they receive, but also the value of all other emoluments. A construction of Section 594 which does not follow these principles can be justified only by the conclusion that Congress intended to place seamen in a less favorable position than workers ashore. This inference is unreasonable and inconsistent with the purposes of the Congressional regulation of maritime employment, which has always been to broaden the

rights of seamen and to enlarge the remedies available to them.

The Court below failed to give effect to this policy of Congress when it curtailed the relief which petitioners sought. The statute was manifestly designed to assure petitioners and other seamen that when they engaged upon a voyage they would receive at least one month's earnings. The cash payments for which they contracted are fixed at levels so low as to compel the conclusion that they are conditioned upon the value of the food and lodging which they are to receive in return for their services. Damages for unlawful discharge do not, therefore, reflect the true contractual relationship unless they take into account the actual earnings computed on the basis both of cash payments and the value of food and lodging.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court directed to the Circuit Court of Appeals for the Second Circuit, commanding said Court to certify and send to this Court a complete transcript of the record and all proceedings had in said Circuit Court of Appeals for the Second Circuit in the case therein entitled "Harry Newman, Frederick Batchelor, Juan Uribe, Crescencio Martin, Ramon Mosquero, Mario Lefler and Francisco Martinez against United Fruit Company; and that said case may be reviewed and determined by this Court and the decision therein finally revised; and that your petitioners may have such other and further relief in the premises as to this honorable Court may seem appropriate.

Respectfully submitted,

HARRY NEWMAN, FREDERICK BATCHELOR,
JUAN URIBE, CRESCENCIO MARTIN, RAMON
MOSQUERO, MARIO LEFLER and FRANCISCO
MARTINEZ,

By: WILLIAM L. STANDARD,
Attorney.

